IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8416 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

YOGESH BATUKBHAI VALAND

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR UDAI BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 09/11/2000

ORAL JUDGEMENT

1. Heard learned Advocate Mr. Gondaliya for learned Advocate Mr.Yogesh S.Lakhani for petitioner and learned AGP Mr. Udai Bhatt for respondents No. 1, 2 and 3.

2. Present petitioner was detained under the Gujarat

Prevention of Anti Social Activities Act, 1985 (PASA for short), vide order of Respondent No.1, District Magistrate, Amreli, dated 16th June, 2000, under powers conferred upon him under Sec. 3(1) of the PASA Act. The petitioner was detained in pursuance of this order from 20th June, 2000. Grounds of the detention along with papers were supplied to the petitioner at the time of serving of detention order on the petitioner. This order of respondent No.1 dated 16th June, 2000, is challenged by the petitioner by way of this petition under Article 226 of the Constitution.

3. The grounds of detention, copy of which is produced on record, indicates that the petitioner was involved in selling and trafficking English liquor and following four crimes are registered against the petitioner.

(i) Amreli City Police Station, Crime Register No. 37 of 1998 under Sections 66(B), 65(A)(E) and Sec. 81 of the Bombay Prohibition Act, whereby the illegal liquor to the tune of Rs. 21,750/- was recovered from the possession of the petitioner and the crime was registered on 28th June, 1998.

(ii) Amreli City Police Station Crime Register No. 10 of 1999 under Sections 66(B), 65(A)(E) and Section 81 of the Bombay Prohibition Act, whereby the illegal liquor worth of Rs.12,900/- was recovered from the petitioner. The crime was registered on 10th of February, 1999.

(iii) Amreli City Police Station, Crime Register No. 52 of 1999 under Sections 66(B), 65(A)(E), 81, 83, 108 and 116 (B) of the Bombay Prohibition Act, whereby illegal liquor worth of Rs. 54,400/- was recovered, and a Maruti Van was also seized. The crime was registered on 17th July, 1999.

(iv) Amreli City Police Station, Crime Register No. 49 of 2000, under Sections 66(1)(B), 65(A)(E) and under Sections 81, 83, 108 and 116 (3) of the Bombay Prohibition Act, whereby illegal liquor worth of Rs. 1,08,000/- along with a car - Tata Sumo, worth of Rs.3 lacs was seized from the petitioner. The crime was registered on 24th May, 2000.

4. It is alleged that the petitioner deals in the

illegal liquor and causes obstruction of public order by anti social activities. Detaining authority further relied on the statements of seven witnesses, who have narrated the instance of dated 31st May, 2000, 1st of June, 2000 and 3rd of June, 2000, by which the detaining authority came to the conclusion that the petitioner was involved in anti social activities and the facts narrated by the above seven witnesses were true and correct. Their names and addresses were kept secret on the ground that the witnesses out of fear of the petitioner want their identity to be kept secret. The detaining authority further exercising the privilege as per Sec. 9(2) of the said Act, has not disclosed the names and addresses of the above said witnesses. The detaining authority has further stated that the illegal and anti social activities of the petitioner could not be prevented by taking action under the Bombay Police Act for the externment because the proceedings were likely to take time. The petitioner, therefore was declared as a "bootlegger" within the meaning of Sec. 2(b) of the PASA Act.

5. In support of the action of the detention of the petitioner and the proceedings taken, J.R. Rajput, Under Secretary, Home Department and respondent No.1, District Magistrate, Amreli, have filed their affidavits on record, which are also considered.

6. The order of detention on behalf of the petitioner was challenged on various grounds. It has been urged that the verification of the statements of the witnesses No.1, 6 and 7 has not been done by the detaining authority, as stated by it in the order. The detaining authority has not taken at all into consideration any less drastic remedy to prevent anti social activities as well as illegal activities of the petitioner. Representation of the petitioner dated 24th July, 2000 was not considered by the Government as expeditiously as it was necessary to consider and there is a delay of 2 days in deciding the representation. The discretion used by the detaining authority under Section 9(2) of the said Act is wrongly exercised and that has caused prejudice to the detenu.

7. After considering the rival contentions and scrutinising the record, it clearly appears that the subjective satisfaction of the detaining authority is vitiated on two grounds i.e. (i) verification of the witnesses and (ii) consideration of less drastic remedy by the detaining authority.

8. In detention order, which is placed on record, the detaining authority at internal page 30 of the grounds of the detention has clearly mentioned that the Sub-Divisional Police Officer and the Detaining Authority itself have verified the statements of the witnesses and thereafter the detaining authority has come to the conclusion that the details mentioned in the statement were correct. On this ground, the power under Section 9(2) of the PASA Act has been exercised by the detaining authority. In this connection, on seeing the affidavit of respondent No.1 in sub-para (e) of Para 3.3, she has stated that " I submit that I have personally verified the statements of witnesses at Serial Nos. 2, 3, 4 and 5. I submit that the witnesses at serial Nos. 1, 6 and 7 were not available at the time of verification, hence, their statements were not verified by me. However, the Sub-Divisional Police Officer, Amreli had verified all the statements, whereas I have personally verified the statements of four of the witnesses, which is sufficient."

9. Sufficiency of material to send a citizen behind the bar is one thing and applying of mind to arrive at a subjective satisfaction as required under the PASA Act is altogether a different aspect. There is contradiction on record in respect of verification of statement of witnesses in detention order and in affidavit filed. On scrutinising both the statements, it clearly appears that what is not stated in the detention order is stated in the affidavit. This is a glaring example of non-application of mind because making a statement in a detention order as to verification of the statement of the witnesses and making a different statement in affidavit would lead this court to believe that the detaining authority did not consider the material placed before it cautiously and carefully to arrive at a subjective satisfaction. From the record, it is clear that out of 7 witnesses, the statement of three witnesses have not been verified by the detaining authority while other four statements have been verified by the detaining authority. Regarding this position, she has come to the conclusion and made averments in the order that she also verified the statements of the witnesses and then later on while the detaining authority files its affidavit, detaining authority clarified that those three witnesses were not available at the time of verification and detaining authority relied on the verification done by Sub-Divisional Police Officer. This conflicting statement alone is enough to declare detention order vitiated.

10. Next ground, which is required to be considered is regarding subjective satisfaction of detaining authority as to less drastic remedy available to the detaining authority for preventing the petitioner from indulging in anti social and illegal activities. It is not found from the record whether any bail application was preferred and opposed nor any attempt appears to have been made to take out proceedings for cancellation of bail. In ZUBEDABIBI RASIDKHAN PATHAN vs. STATE OF GUJARAT, reported in 1995 (2) GLR 1134, Division Bench of this Court observed that the powers granted to the court for cancelling the bail under Section 437(4) of the Cr.P.C. are far more wide in import and intent, which would be less drastic remedy and could have been considered by the detaining authority. In the detention order, it is nowhere mentioned that this drastic remedy was ever considered. Therefore, the subjective satisfaction of the detaining authority is vitiated on this ground also.

11. The order of detention under challenge is required to be set aside on both the above grounds and therefore, the other grounds urged on behalf of the petitioner are not dealt with.

12. In this view of the matter, the detention order dated 16th June, 2000 passed by respondent No.1 District Magistrate, Amreli against the petitioner is hereby ordered to be quashed and set aside. Petitioner - Yogesh Batukbhai Valand, is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule is made absolute to that extent. D.S. permitted.

(J.R. Vora, J.)

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